

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

ALLAN A. PETERSEN,

Plaintiff,

v.

**CIVIL ACTION NO. 3:08-CV-180
(BAILEY)**

**ANDURAY E. WHITE, VERONICA
FERNANDEZ, RODNEY BUCKLEW,
D. YOST, SUSAN S. MCCLINTOCK,
DOMINIC A. GUTIERREZ, L. LEESON,
B. CALLAHAN, ANYA KOVSCEK,
ROBERT TRYBUS, WILLIAM LAYHUE,
ERIC ELZA, ELIZABETH SANDERS,
N. JUNKINS, E. MALLORY, LT. WILLIAMS,
CORRECTION OFFICER THOMPSON, J. RAMOS
AND CORRECTION OFFICER HENDERSON,**

Defendants.

ORDER ADOPTING OPINION/REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge David J. Joel. By Standing Order, this action was referred to Magistrate Judge Joel for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Joel filed his R & R on June 23, 2009 [Doc. 19].

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140,

150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Joel's R & R were due within ten (10) days of receipt of the R & R, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service of the R & R was accepted on or before June 30, 2009. See Doc. 20. To date, neither party has filed objections to the R & R. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the R & R, it is the opinion of this Court that the Magistrate Judge's Report and Recommendation **[Doc. 19]** should be, and the same is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report

Accordingly, this Court **ORDERS** as follows:

(1) that plaintiff's claims against defendants McClintock, Gutierrez, Elza, Layhue, Ramos and Henderson be **DISMISSED with prejudice** for the failure to state a claim against which relief may be granted;

(2) that plaintiff's claims against defendants Trybus, Junkins and Mallory be **DISMISSED without prejudice** to the plaintiff's right to a determination of those claims in case number 5:07cv53; and

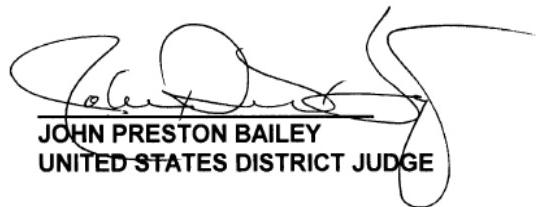
(3) that plaintiff's claims against defendants White, Fernandez, Bucklew, Yost, Leeson, Callahan, Kovscek, Sanders, Williams and Thompson proceed and that those defendants shall answer the Complaint. Accordingly, the Clerk is hereby **DIRECTED** to effect service upon these defendants of a 20-day summons and a copy of the Complaint

through the United States Marshal Service.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein and to mail a copy to the *pro se* petitioner.

DATED: July 29, 2009.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE